

REMARKS

Claims 1-7 presently are pending. Reconsideration and allowance of all the claims are respectfully requested in view of the following remarks. A Statement of Substance of Interview was previously filed on September 22, 2003.

To summarize, claims 1-7 have been examined. Applicant proposes to add claims 8-12; and therefore, claims 1-12 would be all the claims pending in the present application.

The Examiner has withdrawn the previous rejection of claims 1-3 and 5-7 under 35 U.S.C. § 112, second paragraph, as being indefinite. However, in the present Office Action, the Examiner maintains and makes final the rejections of claims 1-7 under 35 U.S.C. § 102(b) as being anticipated by Jakobsen (U.S. Patent No. 4,721,223), claims 1 and 5-7 under 35 U.S.C. § 102(b) as being anticipated by Motill (U.S. Patent No. 4,368,825), and claim 4 under 35 U.S.C. § 103(a) as being obvious over Jakobsen. For the following reasons, these rejections are respectfully traversed.

I. Anticipation Rejections

A. Claims 1-7:

As set forth above, the Examiner maintains the rejections of claims 1-7 under 35 U.S.C. § 102(b) as being anticipated by Jakobsen. In the Response to Arguments, the Examiner states that Jakobsen discloses, in Fig. 5, a side sectional view illustrating a portion of a container base having a convex wall and outgrowth members.

In the previous Amendment, Applicant argued that the petaloid-shaped base of the present invention is formed at the end of the cylindrical wall and is not a separate element added to the end of the container. However, the Examiner considers that claim 1 reads on Figure 5 of Jakobsen, despite the fact that Jakobsen is formed from two separate elements and does not address the problems solved by the present invention.

Clearly, Jakobsen does not disclose at least a container with a substantially cylindrical wall and a petaloid-shaped base “which extends from the substantially cylindrical wall” and at least three members that “originate from the substantially cylindrical wall”, as recited in claim 1.

Further, claim 1 has been amended to recite a monolithic container having a cylindrical wall and a petaloid-shaped base, as described in the specification at, for example, page 1. Accordingly, Jakobsen clearly does not anticipate claim 1, since Jakobsen includes a container with a separate pedestal that is mechanically attached to the base wall, not a monolithic container having both a cylindrical wall and a petaloid-shaped base, as claimed. For example, Jakobsen specifically states that:

The stabilizing device is formed separately and it is connected with the body of the container primarily to an extent which results in a relatively small penetration into the material of the container body. This entails that the material forming the stabilizing device will never come into contact with the liquid that is stored in the container (see col. 6, lines 55-60; emphasis added).

As such, Jakobsen clearly does not anticipate claim 1, nor does it solve the problems solved by the present invention, or for that matter, even address or mention such problems.

Moreover, even if the Examiner alleges that Jakobsen could be somehow modified to arrive at the claimed invention, then the Examiner also must establish that a motivation existed to modify Jakobsen in the alleged manner.

B. Claims 1 and 5-7:

The Examiner also maintains the rejection of claims 1 and 5-7 under 35 U.S.C. § 102(b) as being anticipated by Motill. In the Response to Arguments (see pages 4-5 of the final Office Action), the Examiner considers that section A-C (as shown by the Examiner's marked-up copy of Motill attached to the present Office Action) to be a peripheral marginal linking area with the cylindrical wall, wherein point B is an inflection which is a change from a concave curve to a convex curve, and section C-C is the hemispherical base wall.

However, the Examiner's characterization of Motill is unreasonable. For example, the Examiner takes the position that the base wall of Motill includes only section C-C, not the entire base wall A-A (i.e., A-B-C-C-B-A). Additionally, it is unreasonable to consider that section A-C is a peripheral marginal linking area with the cylindrical wall.

For example, section A-C is not a peripheral marginal linking area, as alleged by the Examiner but, instead, forms a substantial portion of the base wall A-A. In other words, the linking area A-C forms the majority of the bottom end of the container, with the exception of the spherical portion C-C. It is unreasonable to characterize the "peripheral" and "marginal" linking area as including a large amount of the central portion of the base wall. This is contrary to the ordinary meanings of "peripheral" and "marginal". The "peripheral" and "marginal" linking

area is, by its own definition, limited to the periphery or margin of the bottom of the container and does not include the central portion of the base wall.

For the foregoing reasons, it is submitted that claims 1 and 5-7 are not anticipated by Motill.

II. Obviousness Rejection

The Examiner maintains the rejection of claim 4 under 35 U.S.C. § 103(a) as being obvious over Jakobsen.

In Mr. Dresch's discussions with the Examiner, she indicated that claim 4 may overcome the prior art if it is amended to replace "a container" with "a one-piece blow molded plastic container". As set forth above, Jakobsen clearly does not disclose or suggest a one-piece, or monolithic, container.

Therefore, Applicant has amended claim 4 as suggested by the Examiner. New claims have been added corresponding to the subject matter of rejected claims 2, 3 and 5-7, but depending from allowed claim 4 (see, e.g., new claims 8-12)¹. As such, claim 4 and new claims 8-12 should be in condition for allowance.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the

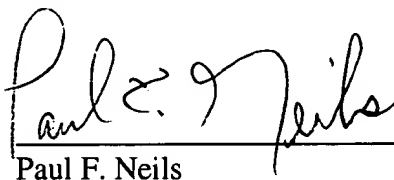
¹ New claims 8-12 should not require further search and consideration by the Examiner, since these claims are directed to the subject matter of claims 2, 3, and 5-7.

AMENDMENT UNDER 37 C.F.R. § 1.116
U.S. Patent Application No. 09/582,292

Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Paul F. Neils", written over a horizontal line.

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